

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**QUARRY SERVICES, INC.;  
Fort Dodge, Iowa.**

**ADMINISTRATIVE  
CONSENT ORDER**

**NO. 2014-WW- 02**

**TO: Wayne Krug  
Quarry Services, Inc.  
2360 270<sup>th</sup> Street  
Oltho, IA 50569**

**I. SUMMARY**

This Administrative Consent Order (Order) is entered into between Quarry Services, Inc. and the Iowa Department of Natural Resources (DNR) in order to resolve the discharge of pollutants from a mine into a water of the state without a permit. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

David Miller, Field Office #2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, IA 50401  
Phone: 641-424-9342

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

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**II. JURISDICTION**

This Order is issued pursuant to the provisions of Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Quarry Services, Inc. is a mining company engaged in gypsum mining. Quarry Services, Inc. has contracted with the North Central Iowa Regional Solid Waste Agency (NCIRSWA) to mine gypsum on the landfill property of NCIRSWA. The mining operation was a precursor to the development of a new landfill cell on the site.
2. On February 7, 2013, DNR inspected the NCIRSWA landfill. During this inspection, Environmental Specialist David Miller inspected the open-pit gypsum mine being operated by Quarry Services, Inc. Mr. Miller observed that a trench had been constructed in the pit to directly discharge storm water and groundwater to Gypsum Creek. Although the water in the trench was frozen during the inspection, a continuous ribbon of ice was observed from the mine, through the trench, and into Gypsum Creek thus indicating prior discharges and the likelihood of future discharges.
3. On February 12, 2013, Mr. Miller interviewed Wayne Krug, President of Quarry Services, Inc. Mr. Krug acknowledged that Quarry Services, Inc. had been mining at this location on the NCIRSWA landfill for approximately four years prior to the inspection. Mr. Krug further acknowledged that Quarry Services, Inc. had not obtained coverage under National Pollutant Discharge Elimination System (NPDES) General Permit No. 5 "Discharge from Mining and Processing Facilities." Mr. Krug further stated that mining activities would be ending within approximately one month.
4. On February 4, 2013, the DNR issued a Notice of Violation to Quarry Services, Inc. for failure to obtain storm water discharge permit coverage and the discharge of pollutants into a water of the state without a permit. Quarry Services, Inc. subsequently obtained the required NPDES General Permit No. 5 "Discharge from Mining and Processing Facilities"
5. On or about March 15, 2013, Quarry Services, Inc. ceased the operation of the gypsum mine on the NCIRSWA landfill property.
6. Quarry Services, Inc. subsequently obtained the required NPDES General Permit No. 5 "Discharge from Mining and Processing Facilities" and paid a one-year permit fee

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of \$125 for the period ending on April 28, 2014. This fee did not cover the prior period of violation.

**IV. CONCLUSIONS OF LAW**

The DNR and Quarry Services, Inc. agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the DNR. Iowa Code section 455B.183 prohibits the construction or operation of disposal systems without or contrary to written permits from the DNR. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system. Quarry Services, inc. has violated these provisions.

2. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted federal regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" includes facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations.

3. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(5) adopts "Discharge from Mining and Processing Facilities," NPDES General Permit No. 5. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by DNR to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. Quarry Services, Inc. has violated these provisions.

4. General Permit No. 5, Part I (D) states: where a mine or quarry is owned by one person but operated by another person, it is the operator's duty to obtain coverage under this permit. It was the duty of Quarry Services, Inc. to obtain permit coverage. NCIRSWA may also be an operator for purposes of this provision. This Order makes no determination as to NCIRSWA's legal obligations or violations.

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5. General Permit No. 5, Part V, provides that the permittee must develop and implement best management practices to prevent and reduce the amount of pollutants in storm water runoff. Quarry Services, Inc. failed to implement best management practices at the site of discharges.

**V. ORDER**

1. The DNR orders and Quarry Services, Inc. agrees that Quarry Services, Inc. shall pay an administrative penalty in the amount of \$5,000 within 30 days of the execution of this Order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the stormwater violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Quarry Services, Inc. achieved an economic benefit from the failure to maintain storm water permit coverage and to develop and implement best management practices. Costs saved include permit fees, preparation costs, sampling costs, lab fees and costs to implement best management practices. The current fee for NPDES General Permit No. 5 is \$400 for a 4-year permit. Laboratory analysis and sample shipping costs for total suspended solids and pH for each discharge event are \$96.38. Best management practices would, at a minimum, include dirt work and the installation of run-off controls. Assuming a minimum discharge frequency of two months per year for four years and a four-year permit, the minimum economic benefit realized by Quarry Services, Inc. is \$1,200. Based upon these considerations, a penalty of \$1,500 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. In this case the maximum penalty is \$5,000 per day for each violation over a four year period. Failure to comply with the requirements for obtaining a storm water permit and developing and implementing sampling and best management practices undermines the effectiveness of all water quality regulations. Without compliance with

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permit requirements, there is an increased risk that contamination from mining operations will enter the surface waters of the state through storm water discharges. Based on the above considerations and the multiple days of violation, \$1,500 is assessed for this factor.


c. Culpability. Quarry Services, Inc. is engaged in the business of gypsum mining and is required to know and comply with the NPDES permitting requirements applicable to that industry. Even if Quarry Services, Inc. reasonably believed that NCIRSWA had obtained a storm water permit, there is no explanation or excuse for the actions of Quarry Services, Inc. in constructing a trench and intentionally discharging storm water to a water of the state without the implementation of any sediment reduction practices or other routine mining-related storm water controls. Based upon these factors and the multiple days of violation, \$2,000 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

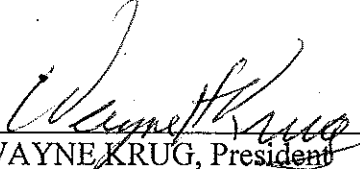
This Order is entered into knowingly and with the consent of Quarry Services, Inc. For that reason Quarry Services, Inc. waives its rights to appeal this Order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175. Total compliance with all provisions of Section "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this Order.

  
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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 24<sup>th</sup> day of  
January, 2014.

  
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WAYNE KRUG, President  
Quarry Services, Inc.

Dated this 18 day of  
December, 2013

Field Office #2; Jon Tack; I.C.(7)(a)

